TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 48

ROSE STAUB, APPELLANT,

vs.

CITY OF BAXLEY.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA.

FILED NOVEMBER 29, 1956

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[fol. 1] **IN THE COURT OF APPEALS OF THE STATE OF GEORGIA**

ROSE STAUB, Plaintiff in Error,

v.

CITY OF BAXLEY, Defendant in Error

EXCERPTS FROM BILL OF EXCEPTIONS

BE IT REMEMBERED that on the 10th day of April, 1954, within the time allowed by law, Rose Staub presented her petition for writ of certiorari to the Superior Court of Appling County, Georgia, and to the Honorable Douglas F. Thomas, Judge of said Court, to review her conviction in the Mayor's Court of the City of Baxley, Georgia, for violation of an ordinance of the City of Baxley prohibiting the solicitation of members for an organization without a permit and license, and on the same date the Honorable Douglas F. Thomas, Judge as aforesaid, sanctioned said petition for writ of certiorari and ordered writ of certiorari to issue, and, in compliance therewith, the Clerk of the said Superior Court filed said petition and writ and issued writ of certiorari directed to the Honorable J. M. Dunn, Judge of the Mayor's Court of the City of Baxley, directing him to send up, under his hand and seal, all the facts and proceedings in said case sought to be reviewed to the next regular October Term, 1954, of the Superior Court of Appling County, Georgia, to be held on the third Monday in October, 1954, and service of the same was duly acknowledged.

AND BE IT FURTHER REMEMBERED, that on the 11th day of October, 1954, the Honorable J. M. Dunn, Judge of the Mayor's Court of the City of Baxley, filed his answer to said writ of certiorari, copy of same was duly served upon counsel for plaintiff in certiorari, and on the 20th day of [fol. 2] October, 1954, plaintiff in certiorari filed her exceptions and traverse to said answer to the writ of certiorari, notice and copy of which was duly served upon counsel of

record for defendant in certiorari, all previous to the calling of said case in its order and at the return term thereof.

Thereafter, at the regular October Term, 1954, of the Superior Court of Appling County, Georgia, and on the 13th day of November, 1954, after having been duly continued, it being stipulated by both parties that all issued of fact and law should be submitted to and decided by the said Honorable Douglas F. Thomas, Judge as aforesaid, without the intervention of a jury, there came on to be tried the issues presented by the exceptions and traverse of the plaintiff in certiorari to the answer to the writ of certiorari, and, after evidence had been introduced by both parties and argument had, the Honorable Douglas F. Thomas, Judge as aforesaid, overruled said exceptions and traverse of the plaintiff in certiorari to the answer to the [fol. 3] writ of certiorari and sustained the answer to the writ of certiorari, and, on written motion of defendant in certiorari, dismissed said petition for writ of certiorari and writ of certiorari on the ground that the certiorari bond had been improperly approved and filed, to which judgment of the Court overruling the exceptions and traverse of the plaintiff in certiorari to the answer to the writ of certiorari and sustaining the answer to the writ of certiorari and the judgment of the Court dismissing said petition for writ of certiorari and writ of certiorari exceptions were duly taken by the plaintiff in certiorari.

Thereupon, plaintiff in certiorari appealed said case by writ of error to this Honorable Court, the same being Case Number 35554, returnable to the February Term, 1955, thereof, and on the 17th day of March, 1955, this Honorable Court reversed the judgment of the lower court on the ground that the evidence demanded a finding that the traverse to the answer to the writ of certiorari should have been sustained and that the Court erred in dismissing the proceedings and ordered that the petition for writ of certiorari be considered on its merits, which judgment was duly made the judgment of the said Superior Court of Appling County, Georgia.

Thereafter, and on the 10th day of December, 1955, after having been duly continued, said case came on regularly to be tried on its merits in accordance with the judgment of

this Honorable Court at the November Term, 1955, of the Superior Court of Appling County, Georgia, before the Honorable Douglas F. Thomas, Judge thereof presiding, and, after argument had, the Court overruled the petition for writ of certiorari and sustained the judgment of the [fol. 4] Mayor's Court of the City of Baxley, Georgia, convicting plaintiff in certiorari of violation of the ordinance of the City of Baxley prohibiting the solicitation of members for an organization without a permit and license, to which judgment of the Court overruling the petition for writ of certiorari and sustaining the judgment of the Mayor's Court of the City of Baxley convicting plaintiff in certiorari of violation of said ordinance of the City of Baxley plaintiff in certiorari then and there excepted, now excepts and assigns the same as error, on the ground that same was contrary to law, and says that said Court should have sustained the petition for writ of certiorari on each and every ground and assignment of error contained therein and reversed the judgment of the Mayor's Court of the City of Baxley convicting plaintiff in certiorari of violation of said ordinance of the City of Baxley. The judgment and order of the Court overruling the petition for writ of certiorari and sustaining the judgment of the Mayor's Court of the City of Baxley thus illegally terminated the case.

Rose Staub names herself as plaintiff in error, and the City of Baxley as defendant in error, in this bill of exceptions.

The Court of Appeals of Georgia has jurisdiction of this case for the reason that same involves the question of the constitutionality and validity of a municipal ordinance and a conviction for violation thereof.

[fol. 12] IN THE SUPERIOR COURT OF
APPLING COUNTY, GEORGIA

PETITION FOR WRIT OF CERTIORARI—FILED APRIL 10, 1954

The petition of Rose Staub shows to the Court the following facts, to-wit:

1. That on the 19th day of February, 1954, petitioner was arrested by Wilton A. Schuman, Chief of Police of the City of Baxley, Appling County, Georgia, and charged with the offense of soliciting members for an organization without a permit and license by written summons requiring petitioner to be and appear before the Mayor's Court of said City of Baxley on the 22nd day of February, 1954, to answer to said charges, a copy of said summons being hereto attached, marked Exhibit 1, and hereby referred to and made a part of this petition and paragraph.

2. After having been duly continued, said case against petitioner came on regularly to be tried in the Mayor's Court of said City of Baxley, Appling County, Georgia, on the 15th day of March, 1954, before Honorable J. M. Dunn, Mayor, presiding, said case being tried by agreement of counsel with another related case against Mamie Merritt.

3. The complete and entire ordinance of said City of Baxley, the violation of which petitioner was charged, is hereto attached, marked Exhibit 2, and hereby referred to and made a part of this petition and paragraph.

4. To said charge and summons, petitioner filed her plea in abatement attacking the constitutionality and reasonableness of said ordinance and alleging the same was unconstitutional, null and void upon the grounds set forth therein, copy of said plea in abatement being hereto attached, marked Exhibit 3, and hereby referred to and made [fol. 13] a part of this petition and paragraph.

5. On the 15th day of March, 1954, when said case against petitioner was called for trial and before the presentation of evidence, petitioner presented her said plea in abatement and after argument by counsel for City of Baxley and petitioner, the Court passed an order over-

ruling said plea in abatement on all of the grounds therein stated. Petitioner then and there excepted and assigned said order overruling said plea in abatement, as error, and here and now assigns the same as error.

6. After the overruling of said plea in abatement, said case preceeded to trial under petitioner's plea of not guilty, evidence was introduced in behalf of said City of Baxley and petitioner made a statement in her own behalf. The evidence introduced and the statements made were reported and transcribed in detail in question and answer form, which transcript of the evidence has been reduced to its narrative form and is hereto attached, marked Exhibit 4, and hereby made a part of this petition and paragraph.

7. After argument of counsel for City of Baxley and petitioner, the case was submitted to Honorable J. M. Dunn, Mayor, who thereupon returned his judgment in words and figures as follows:

"Plea of not guilty. Judgment $300 or 30 days confinement in City jail.

J. M. Dunn
3-15-54 Mayor and Ex-Officio Recorder"

8. Thereupon, on the 15th day of March, 1954, petitioner presented her bond as provided in Georgia Code Section 19-214 for the purpose of obtaining an order of supersedeas to the Clerk of said Mayor's Court of said City of Baxley, [fol. 14] same was attested, accepted and approved by said Clerk, copy of which, with attestation, acceptance and approval, being hereto attached, marked Exhibit 5, and hereby referred to and made a part of this petition and paragraph; said Clerk certified that said supersedeas bond had been filed, approved and accepted by said Clerk on the 15th day of March, 1954, the original certificate being hereto attached, marked Exhibit 6, and hereby referred to and made a part of this petition and paragraph; said Clerk thereupon issued an order of supersedeas on the 15th day of March, 1954, directed to Wilton A. Schuman, Chief of Police of said City of Baxley, copy of said order of supersedeas being hereto attached, marked Exhibit 7, and hereby referred to and made a part of this paragraph and petition.

9. Petitioner comes now after having complied with the law in such cases and presents this her petition for certiorari within thirty days from the final determination of said cause.

Your petitioner specifically assigns error as follows:

A. Petitioner excepts to the order of the Court, dated March 15, 1954, overruling petitioner's plea in abatement. Petitioner did then and there except to said order and now assigns the same as error for the reason that the same is contrary to law, and for the further reason that the evidence as to the contents of said ordinance was uncontridicted and petitioner's plea in abatement should have been sustained on each and every ground and the case against petitioner dismissed.

B. Petitioner excepts to the judgment of the Court, dated March 15, 1954, convicting petitioner. Petitioner did then [fol. 15] and there except to said judgment and now assigns the same as error for and on the following reasons and grounds:

(1) Said judgment is contrary to law.

(2) Said judgment is without evidence to support same.

(3) Said judgment is contrary to the principles of justice and equity.

(4) Because the ordinance, the violation of which petitioner was charged and convicted, was and is unconstitutional and unreasonable, null and void for all of the following reasons and grounds, all of which reasons and grounds were made and urged before the Honorable J. M. Dunn, Mayor, upon the trial of petitioner's case in the Mayor's Court of the City of Baxley, Appling County, Georgia, on the 15th day of March, 1954.

(a) Said ordinance with which petitioner is charged to have violated shows on its face that it is repugnant to and violative of the 1st and 14th amendments to the Constitution of the United States in that it places condition precedent upon, and otherwise unlawfully restricts the petitioner's freedom of speech as well as freedom of the press and freedom of lawfull assembly. Petitioner shows that the

right to engage in organizing labor unions is an inherent constitutional right consisting of soliciting members by pointing out to workers the advantages of belonging to labor unions, such solicitation being done by word of mouth, by pamphlets or other publications and by holding meetings of those desirous of being informed of the facts about labor unions. Petitioner shows that such acts are restricted and limited by said ordinance so as to place a condition precedent, by way of payment of a license fee, on the privilege of engaging in the constitutional rights of free speech, [fol. 16] free press and free assembly.

(b) Said ordinance is repugnant to and violative of Section 7 of the National Labor Relations Act, as amended, and trends to contravene said act and the public policy of the United States as contained in said Act by establishing unwarranted conditions upon the right of petitioner to participate in the labor activities secured by the National Labor Relations Act, as amended, and the public policy of the United States. Thus the ordinance which interferes with such rights is in direct conflict with superior Federal legislation and is therefore unconstitutional, null and void.

(c) Said ordinance is not a valid ordinance in that it denies equal protection of the laws to petitioner and others like petitioner in that said ordinance, which requires the payment of large sums of money, is founded upon an unreasonable and invalid classification of persons which must pay the confiscatory fee which is set out in the ordinance. Said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization. Such classification is not a reasonable classification for imposing the payment of a fee upon petitioner and other similarly situated.

(d) Said ordinance is invalid in that it shows on its face that it is a regulatory measure imposing a flat tax upon a privilege which is excessive in amount. The sums of money charged under said ordinance are of such amount as to be wholly unreasonable, confiscatory and prohibitory. The amounts of money charged in said ordinance are so large [fol. 17] that it could not reasonably be paid by anyone

desiring to organize any sort of organization and therefore exist solely to prevent and deprive petitioner and others like petitioner from organizing members in their organizations and exercising rights previously herein set out. The ordinance shows on its face that it is patently a device intended to prevent organization within the city limits in behalf of labor unions. It is a well known fact this day and time that labor unions constitute the vest majority of organizations which send paid representatives into communities for the purpose of organizing and soliciting membership. The above purposes are illegal and improper and are a misuse and abuse of the law-making powers of the defendant city, but nevertheless will be successful in depriving petitioner of her rights unless this Court declares said ordinance null and void.

(e) Said ordinance is an invalid regulation in that it leaves within the discretion of the Mayor and City Council, with no form of appeal or any objective or definitive standards, the refusal or granting of the license required.

(f) Said ordinance is void in that the same is repugnant to and violative of Article 1, Section - , paragraph 3 of the Constitution of the State of Georgia in that the same is not impartial but is unreasonable and arbitrary and contravenes said Section.

(g) Said ordinance is unconstitutional and void as violative of Article I, Section 1, paragraph 3, of the Constitution of Georgia in that petitioner is deprived of her liberty and property without due process of law.

[fol. 18] (i) Said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley, Georgia, but shows on its fact that it is unreasonable, confiscatory, prohibitory and discriminatory, and that it exists solely for the purpose of denying petitioner and others from engaging in a lawful occupation and that said ordinance is for the purpose of preventing the organization of labor unions within the city limits of Baxley, Georgia.

(j) Said ordinance is patently void in that the same is a misuse and abuse of the police power of the City of

Baxley, Georgia, in an effort to deprive petitioner and others similarly situated of their rights herein referred to through the subterfuge of a city ordinance.

Wherefore, the premises considered, petitioner prays for a writ of certiorari, directed to Honorable J. M. Dunn, Mayor and Judge as aforesaid, requiring him to certify and send up all the proceedings in said case to the next term of the Superior Court of Appling County, Georgia, to be held in and for said County on the 18th day of October, 1954, that the errors alleged to have been committed considered and corrected.

POOLE, PEARCE & HALL, WILSON & WILSON
By Leon A. Wilson II, Attorneys for Petitioner.

[fol. 19] EXHIBIT 1 TO PETITION

POLICE COURT Baxley, Ga., February 19, 1954

M. Rose Staub

You are hereby summoned to be and appear before the Police Court of said City at 7 o'clock P. M. on the 22 day of February, 1954, to answer to the offense of Soliciting Members for an Organization Without a Permit & License.

Herein fail not under penalty of Twenty-five Dollars.

Wilton A. Schuman, Chief of Police

[fol. 20] EXHIBIT 2 TO PETITION

"AN ORDINANCE TO REGULATE THE SOLICITATION OF MEMBERSHIP IN ORGANIZATIONS AMONG THE CITIZENS OF CITY OF BAXLEY: TO PROVIDE FOR PERMITS FOR PERSONS OR AGENTS SOLICITING SUCH MEMBERS: TO PROVIDE FOR LICENSE FEES AND FOR VIOLATION OF THIS ORDINANCE.

BE IT AND IT IS HEREBY ORDAINED BY MAYOR AND COUNCIL OF CITY OF BAXLEY AS FOLLOWS:

Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payments of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.

Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such applicant has been engaged during said time, and shall furnish at least three persons as references to applicants's character. Said application shall also furnish the information as to whether applicant is a salaried [fol. 21] employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.

Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the information given in the application, or in the event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may submit for consideration any evidence that he may desire bearing on the application, and any interested person shall have the right of appearing and giving evidence to the contrary.

Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which

members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

Section V. The granting or refusing to grant of such application for a permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

Section VI. In the event that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed in the City of Baxley, or received a [fol. 22] fee of any sort from the obtaining of such members, he shall be issured a permit and license for soliciting such members upon the payment of $2000.00 per year. Also $500.00 for each member obtained.

Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens of persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

Section VIII. All Ordinances of City of Baxley in conflict with ordinance are hereby repealed.

Section IX. Should any section or portion of this Ordinance be held void, it shall not affect the remaining sections and portions of same.

Duly adopted by Mayor and Council of City of Baxley in regular meeting duly assembled on the 17th day of Sept., 1949.

/s/ C. A. Whitaker, Mayor, /s/ J. H. Keels, Clerk."

Recorded in City of Baxley Minute Book 3, page 396.

[fol. 23] EXHIBIT 3 TO PETITION

GEORGIA: APPLING COUNTY:

City of Baxley

vs.

Rose Staub

In Police (Mayor's) Court, of the City of Baxley.

Soliciting members for an organization without a permit or license.

Now comes the defendant and files this her plea in abatement in the above stated case, and for grounds thereof, shows the following grounds, to-wit:

1. Defendant was arrested on February 19th, 1954, and charged with violation of an ordinance of the City of Baxley, and copy of which is hereto attached, marked exhibit "A" and hereby referred to for all purposes.

2. Defendant alleges that the prosecution of said case should be abated upon the ground that said ordinance is unconstitutional and void for the reasons hereinafter stated.

(a) Defendant shows that the ordinance with which she is charged to have violated shows on its face that it is repugnant to and violative of the 1st and 14th Amendments to the Consfitution of the United States in that it places a condition precedent upon, and otherwise; unlawfully restricts the defendant's freedom of speech as well as freedom of the press and freedom of lawful assembly. Defendant shows that the right to engage in organizing labor unions is an inherent constitutional right consisting of soliciting members by pointing out to workers the advantage of belonging to labor unions, such solicitation being done by word of mouth, by pamphlets or other publications and by holding meetings of those desirous to be informed of the facts about labor unions. Defendant shows that such [fol. 24] acts are restricted and limited by said ordinance

so as to place a condition precedent, by way of the payment of a license fee, or the privilege of engaging in the constitutional rights of free speech, free press and free assembly.

(b) Defendant shows that said ordinance is repugnant to and violative of Section 7 of the National Labor Relations Act, as amended, and tends to contravene said Act and the public policy of the United States as contained in said Act by establishing unwarranted conditions upon the right of defendant to participate in the labor activities secured by the National Labor Relations Act, as amended, and the public policy of the United States. Thus the ordinance which interferes with such rights is in direct conflict with superior Federal legislation and is therefore unconstitutional, null and void.

(c) Defendant shows that said ordinance is not a valid ordinance in that it denies equal protection of the laws to defendant and others like defendant in that said ordinance, which requires the payment of large sums of money, is founded upon an unreasonable and invalid classification of persons which must pay the confiscatory fee which is set out in the ordinance. Said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization. Such classification is not a reasonable classification for imposing the payment of a fee upon defendant and others similarly situated.

(d) Defendant shows that said ordinance is invalid in that it shows on its face that it is a regulatory measure [fol. 25] imposing a flat tax upon a privilege which is excessive in amount. The sums of money charged under said ordinance are of such amount as to be wholly unreasonable, confiscatory and prohibitory. The amounts of money charged in said ordinance are so large that it could not reasonably be paid by anyone desiring to organize any sort of organization and therefore exists solely to prevent and deprive defendant and others like defendant from organizing members in their organization and exercising rights previously herein set out. The ordinance shows on its face that it is patently a device intended to prevent organization within the city limits in behalf of labor unions.

It is a well known fact this day and time that labor unions constitute the vast majority of organizations which send paid representatives into communities for the purpose of organizing and soliciting membership. The above purposes are illegal and improper and is a misuse and abuse of the law-making powers of the plaintiff city, but nevertheless will be successful in depriving defendant of her rights unless this court declares said ordinance null and void.

(e) Defendant shows that said ordinance is an invalid regulating in that it leaves within the discretion of the Mayor and City Council, with no form of appeal or any objective or definitive standards; the refusal or granting of the license required.

(f) Defendant shows that said ordinance is void in that the same is repugnant to and violative of Article 1, Section 1, paragraph 3 of the Constitution of the State of Georgia in that the same is not impartial but is unreasonable and [fol. 26] arbitrary and contravenes said Section.

(g) Defendant shows that said ordinance is unconstitutional and void as violative of Article 1, Section 1, Paragraph 3 of the Constitution of Georgia in that defendant is deprived of her liberty and property without due process of law.

(h) Defendant shows that said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley, Georgia, but that said ordinance on its face shows that it is unreasonable, confiscatory, prohibitory and discriminatory, and that it exists solely for the purpose of depriving and denying defendant and others from engaging in a lawful occupation and that said ordinance is for the purpose of preventing the organization of labor unions within the city limits of Baxley, Georgia.

(i) Defendant avers that said ordinance is patently void in that the same is a misuse and abuse of the police power of the City of Baxley, Georgia, in an effort to deprive defendant and others like defendant of their rights herein referred to through the subterfuge of a city ordinance.

3. Defendant alleges that because of the aforesaid reasons said ordinance is unconstitutional and void, and should

be so declared by the court, and the action against defendant for violation thereof abated.

Wherefore, defendant prays that this her plea in abatement be sustained, and that she be discharged without costs from the aforesaid criminal charge.

Poole, Pearce & Hall, Wilson & Wilson, Attorneys for Defendant.

[fol. 30] EXHIBIT 4 TO PETITION

GEORGIA, APPLING COUNTY

IN MAYOR'S COURT OF CITY OF BAXLEY

CONVICTION FOR OFFENSE OF SOLICITING MEMBERS FOR AN ORGANIZATION WITHOUT A PERMIT AND LICENSE ON MARCH 15, 1954, AND SENTENCED TO 30 DAYS IMPRISONMENT OR A FINE OF $300.00.

CITY OF BAXLEY

VS.

MAMIE MERRITT AND ROSE STAUB

BRIEF OF THE EVIDENCE

W. A. Schuman was called as a witness in behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is W. A. Schuman, Chief of Police of the City of Baxley, Georgia. I was Chief of Police of the City of Baxley during February, 1954. I know the defendants, Rose Staub and Mamie Merritt. I saw each of these defendants in Baxley, Georgia during February of this year. The date

was the 19th of February. The first time I saw them they were at the Baxley Motor Court and we tried to contact them there but we didn't get them until they went to the Mimosa Restaurant to have dinner. I talked with Rose Staub. She told me what she was doing in the City of Baxley at that time. At first she denied it, but then she showed me her card from the International Ladies Garment Workers' Union and then told me what she was doing—both of them. She said she was employed by that organization. Both of them said they were soliciting members for that organization in Baxley. By both of them I mean [fol. 31] Rose Staub and Mamie Merritt. (It is stipulated by counsel for the City of Baxley and the defendants that the International Ladies Garment Workers' Union is a union that requires dues of its members.) I asked them if they had a permit as required by an ordinance of the City of Baxley dated September 17, 1949, and recorded in Minute Book Number 3, page 396. They said they had no permit or hadn't made any application for it. All of that was in the City of Baxley, Appling County, Georgia, during February of this year.

Cross examination.

Rose Staub and Mamie Merritt stated that they were going around talking to some of the women to organize the factory workers, or something to that effect. They didn't exactly use the word "solicit," but to gain membership and gather members for it and hold meetings with them for that purpose. I did not understand that they were collecting money for members at that time from my conversation with them. They were trying a preliminary organization, but they didn't tell me they were. Indirectly and directly, I don't know of my own knowledge whether they ever solicited any member or obtained any funds for membership or signed anyone for membership in this union. I didn't see them solicit any members. I have never had anyone apply for this permit or license to solicit members for an organization in the City of Baxley since I have been Chief. I have been Chief since February 1 of this year. I don't know the amount of any license paid by any business or organization to the City of Baxley of my own knowledge.

Louise Bowyer was thereupon called as a witness in behalf of the City of Baxley, and having been duly sworn, [fol. 32] testified as follows:

Direct examination.

I live in the City of Baxley on Jones Street. I recognize the defendants, Rose Staub and Mamie Merritt. I first saw them when they came to my house the first of the week before the 19th on Monday and Tuesday. That was before February 19, 1954, on Monday of that same week, at my house in the City of Baxley. I had not seen them before that time. I did not know either of them. I hadn't contacted either of them by writing or correspondence of any sort or telephone or in any manner prior to that time. I did not know they were coming to my house. They said they were trying to get people to join the union. They did not show me a membership card that time. I had a later meeting with them over at Mrs. Catherine Taylor's. She lived in the housing project in the City of Baxley and the meeting I was speaking of was with them in the City of Baxley. There were four of us besides the two ladies. They were Rebecca Stone and Sylvia Dixon and Mrs. Catherine Taylor. At that time each of these defendants, Rose Staub and Mamie Merritt, said they were interested in trying to get some more girls from Hazlehurst to join up with them —with the union. We all work in Hazlehurst. The others present and I work in Hazlehurst now. We live in Baxley. They stated that they wanted more girls from Hazlehurst to join the union—wanted us to get more. They said they would leave some cards with us. They said the dues would be sixty-four cents a week. They did not state how much we were to pay before we became a member. It would be sixty-four cents a week, they said, and our top pay would be ninety-two or ninety-three cents an hour, is what our pay would be if we joined the union. I don't remember if [fol. 33] they told us what we would pay a week in advance. We were to pay sixty-four cents a week. They made some statement about a card or our obtaining a card. They said we could get a card and get more to give to the others. They were going to give us a card if we wanted to join the union. They said we didn't have to sign our names. We

could make an "X" and the ones we worked for would never know that we joined. They said they would give us the card upon our signing that way. All of that was in the City of Baxley. Each of the defendants did state that they wanted us to join the union and they had the cards.

Cross examination.

I do not have any of the cards that they said they would leave with us. We didn't accept any cards. I did not read one of them. I don't know what those cards said. I didn't see the cards. I wasn't interested in it. The first time that I saw them, Mrs. Taylor was on my porch with me. The next time I saw them was at Mrs. Taylor's house. They parked their car in my yard and went over to Mrs. Taylor's. I went over there, too. I was interested enough in it to go over there, but I wasn't interested enough in it to read the cards. Rose Staub and Mamie Merritt did not ask me for any money at all. They did not try to get me to pay any money. She did not ask me to sign one of the cards she was talking about. She said she would leave us cards to get signed. She said I could sign them if I wanted to, but she didn't attempt to have me sign one. She didn't attempt to have any of the other girls to sign one in my presence that I know of. I didn't see any money. I don't think it was necessary for us to sign these cards before anyone would come down here to ask us to join the union. [fol. 34] I don't think that is what she explained to us. She was explaining it to us then. She just told us how much would be taken out of our pay each week if we joined the union. She said we could join the union if we wanted to and she wanted us to get other girls from up there to join the union. She didn't ask me to join the union. She said all of us.

Redirect examination.

I reckon all of us included me. I was there. That was the purpose of the meeting—to get us all to join the union, as they stated. I was there. They said they had these cards there. They were membership cards, that's what they were.

Recross examination.

She explained the union to us that she was working for, and she said wanted us to get more of the girls from up there to join with us if we did to put that over. She wanted to give us cards for us to go get somebody to join the union. She said she would leave cards there, but she didn't leave any cards. She didn't ask me directly to sign a card or join the union.

Redirect examination.

When I said she asked all of us, that was all of us present. We were all there. We all refused and after that she didn't leave the cards. There wasn't any cards left.

Recross examination.

If she asked any of them in my presence to join the union, she asked them separately. She didn't me. She didn't in front of me that I know of. I don't know.

CATHERINE TAYLOR was thereupon called as a witness in [fol. 35] behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is Catherine Taylor. I am married. I live at 501 Speer Home in the City of Baxley, Georgia. I know the defendants, Rose Staub and Mamie Merritt. I saw them on Monday, February 15th of this year. I had never saw them before until that day. They did not come to my house. They stopped at Louise Bowyer's out in the road and asked me where Lou-se Bowyer lived, and I told them where she was. They came and knocked on the door at the Speer Home for a lady who works for Miller at the shirt factory. I saw them. Then they got back in their car and pulled over to Louise Bowyer's yard. I had not seen them prior to that time. I didn't request them to come there. I never saw them before. I was present part of the time when they talked with Louise at Louise Bowyer's house. Later they

met with me and several other ladies at my house. That was on Friday following Monday. I was very interested in the union if they would sign me a paper saying that they would put the lady next to me out if she didn't go to the union, and she told me she would; that she wouldn't be afraid to sign a paper saying that. They had requested that we hold a meeting at my house. They stated that the purpose of the meeting was for getting members for the union. They asked me to get others together. I got four others to meet at my house and Rose Staub and Mamie Merritt met with us over there. They asked me to become a member of the union. I stated that if they would sign me a paper saying that they would put the girl next to me out [fol. 36] if she didn't go union; that I would sign the union and help them to get more members to join, and she told me she would. That was Rose Staub talking. She left my house around twelve or maybe one in the day; and she told me she was most positive that she could sign the paper; that she wasn't afraid in the least bit, but she would call her boss and come back at three and bring the paper to me. At that meeting they told us the dues would be sixty-four cents a week. They stated that they were to be paid four weeks in advance if we joined. They said they had membership cards there. They offered to give us membership cards upon payment of the amount stated. She said she would leave the cards, and I told her that is she would sign the paper I would be willing to take the cards. Both of them asked me to become a member of the union for which they were working. I saw her again later. She came back. Both of the defendants, Rose and Mamie, were there. She told me she couldn't sign the paper, but she told me that if I had enough girls there at seven o'clock that night she would like to have a meeting. We didn't have another meeting. I called and ask her if she could come. I called Rose and asked her if she could come, and she said the law had got after her. We did not join the union. I would not join after she didn't do what she said she would do. She did not leave the cards after we refused [fol. 37] to join. That all took place during February of this year in the City of Baxley.

Cross examination.

I saw these parties three times altogether. On the first occasion Louise Bowyer was with me. These four were with me on the second occasion. No one was with me on the third occasion but just me and my daughter. They asked me to join the union in my house. That was at the meeting where all of us met together. She told us all about the union on Monday, and said that she would like for us all to join the union; that she would be back to explain it later to us. She specifically asked me to sign a membership card, but I held her off with the paper. She did not ask me to pay any dues at that time, because I didn't go that far with it. She told us she would leave a good many cards with us, but I didn't see the cards. The cards she was to leave with us were for us all to get other members. We agreed to do that under certain circumstances—that is, her signing the paper. I didn't want to pay union fees and the girl next to me didn't pay them. I didn't sign a card or give them any money. Both of them asked me to join the union. They just told us they wanted us to join the union, and said it would be a good thing for us to do—to join the union, and went on to tell us how this union would help us. She told us she wanted us to join the union then, but I held her off on signing the paper. It was in the room there with all of us. Mrs. Bowyer had stepped out several times to see about her kids, but she was in there most of the time. It was a general discussion. She didn't just ask us one time, because I was willing to join the union if she would sign my paper. I couldn't tell positively [fol. 38] if she asked us at the time Louise Bowyer was in the room. I work over in Hazlehurst. I don't work in Baxley. I definitely did not call these parties on one occasion. I called them about the last time to come—the last time they were to come at seven, and I did call them at seven. I called them and asked them if they were coming. I didn't know about them being in trouble in any way. I didn't know about that. I definitely did not make any complaint to the police. I do not know who did that.

SYLVIA DIXON was thereupon called as a witness in behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is Sylvia Dixon. I live at 101 West Park Avenue. I don't work. I stay at home. I know the two defendants in this case. The first time I saw them was on Friday, the 19th, when I saw them from the Morrelton Cafe, and then I saw them at Mrs. Taylor's later in the day, around noon time. That was in the City of Baxley at Mrs. Catherine Taylor's. The defendants said that the purpose of meeting with us at Mrs. Taylor's was to organize a union here in Baxley and Hazlehurst. They asked those present to join the union. They told us that the dues would be sixty-four cents a week. They stated they had membership cards. They offered us cards. They offered us to sign a card that they would take and send in and we would be a member and we would not have to sign our names so our boss and the company that we might be working for would know that we were members until we could hold a meeting and overthrow—take over the union up there; and as soon as they could get forty per cent they could go in the factory [fol. 39] up there and they could then force the union on the rest of the members, or the rest of the workers, rather. That was what they told us.

Cross examination.

I didn't ever communicate with these parties over the telephone. There was other conversations with them besides what I have just mentioned at this meeting at Mrs. Taylor's. It was concerning the union and getting members. They wanted us to join so if they ever got forty per cent of the workers' in the factory names on those cards they could take over from there. I didn't see the cards. I didn't ask to read one of them. I haven't worked this year. I worked until Christmas. I was interested in knowing what the union would mean to the workers. They conducted themselves in a proper manner to be organizing a union.

* * * * * * *

[fol. 41] Lois Taylor Sharp was thereupon called as a witness in behalf of the City of Baxley, and having been duly sworn, testified as follows:

Direct examination.

My name is Lois Taylor Sharp. I have been Clerk of the City Council since February 2, 1953. Neither Rose Staub nor Mamie Merritt have made application for a permit as required by an ordinance passed by the city of Baxley dated September 17, 1945, recorded in Minute Book Number 3, page 396, of the minutes of the City of Baxley since I have been Clerk. I keep the records of the City of Baxley. No permit has been issued to either of these parties; no application filed according to my record.

Cross examination.

I have never had anyone ask for a permit or a license to solicit members for an organization since I have been Clerk. I have a schedule of licenses that are charged by the City of Baxley for various businesses. The amount of yearly license required for automobile accessories, wholesale and retail, is $100. $150 is the amount charged a bank or banker. For a billiard or pool room, the first table is $100, and $10 each additional table. The book or magazine agent is charged $10 per day. $2 per day is charged for a bill [fol. 42] poster and bill cards, and sample advertising matter. $50 is charged for a cafe or restaurant. A carnival tent show is charged $100 per day with the consent of the Mayor and Council. The amount charged to merchants with general and specific stock is broken down into terms of merchandise and it is based on inventory. $150 is charged from $10,000 to $20,000. $100 is charged from $5,000 to $10,000. The regular moving picture show is charged $200 per year.

The Defendant, Rose Staub, thereupon made the following statement:

Well, to start with at the very beginning, to begin with I told the Chief of Police nothing—absolutely nothing. Whatever was said he asked me and I answered it. And

we were riding along the street one day, and these two women here—Mrs. Bowyer and the other one—happened to be on the porch. And we started to talk to them and asked them if they worked at Hazlehurst, and they came over to the car on the street, and I started to talk to them and asked them if they worked there, and they said, "Yes," and I says, "Do you ever hear anything about a union here?" And they said, "No." And Mrs. Taylor, she left and the other lady, we stood talking to her a while, and we pulled away, and we said we would see them again sometime; so the second time, why—that was the second time. This woman over here told about seeing us at the cafe. Mrs. Horne, of the tourist court—we could have got her for a witness, but we thought probably we didn't need her; but she had a call from Mrs. Taylor in the morning and she mentioned her name, who she was, and she said she would like to have us come to her house and she would like to talk to us, and I said, "All right, you tell her that we will be around a little later." This was eight o'clock [fol. 43] in the morning, after we had breakfast, or they could come over to the cabin if they liked, and she said no, to come to her house; so we went and had breakfast and went across the street. This lady here—what's her name? Mrs. Dixon was with her—they were sitting in the car, and I talked to them, and they said, "We are waiting for someone." They said, "We will se- you around at Mrs. Taylor's." I said, "All right." So we drove around, and as we did Mrs. Taylor come along the street. We were still on the street at that time. And she says, "Come on and come in my house. We would like to talk to you." And Mrs. Bowyer was with her. So the four ladies came inside and they said they wanted for me to explain about the union; so I explained to them what I knew—what I could tell them about it. So it is true that Mrs. Taylor said, "Could you make a statement or give us a written statement that is we won the election in this shop what we would do with these other people if they didn't want to join the union?" I said, "Georgia has a law and they don't allow you to force people into it, but we don't have too much trouble about it," I said, "after the shop is once union." So she said, "I can get you at least fifteen people

here to sign cards and we can get the union in, I am sure, and I can bring them here. I'm going down for my pay today and I'm going to speak to some of these girls and I will have them here for a meeting tonight for you." I said, "All right. We will come around later." And as far as the sixty-three cents, we told them then that the union must be in before they ever start paying. I said, "I expect to leave town. I don't expect to be here. I'm only here on an investigation, and, I said, "I will leave cards with you and you get your people to sign and I will call [fol. 44] back." About signing the cards with an "X", one of the girls said, "Well, what would you do if you can't write?" I said, "If you can't write you can put an "X" to the card." And I never would say to anybody, "Just sign an "X". I said that we keep it a secret until we have enough cards signed to petition for an election, which was about forty per cent of the shop. It is necessary to prove signatures and authenticity of the cards; with the Labor Board that is necessary. Of course, the Labor Board is not interested in the card, they are only interested in the amount of cards signed, and you must have forty per cent. of the factory before you can petition for an election.

[fol. 45] Introduced in evidence by the defendants, without objection, the ordinance of the City of Baxley, as it appears on the original minute book, under which said charges were brought, and designated herein as Defendant's Exhibit A.

THE DEFENDANTS REST.

THE CITY OF BAXLEY CLOSES.

THE DEFENDANTS CLOSE.

[fol. 51] IN SUPERIOR COURT OF APPLING COUNTY, GEORGIA.

[TITLE OMITTED]

ANSWER TO PETITION FOR CERTIORARI—Filed October 11, 1954

Now comes J. M. Dunn, Mayor of the City of Baxley, and in answer to the writ of certiorari issued in the above stated matter, files this his answer and shows:

1. The allegations of paragraphs 1, 2 and 3 and the exhibits referred to in said paragraphs, marked exhibit 1 and exhibit 2 are correct.

2. Answering paragraph 4 it is stated that petitioner filed a plea in abatement, correct copy of which is attached to her petition, referred to in paragraph 4 of the petition as exhibit 3.

3. The allegations contained in paragraphs 5, 6 and 7 are correct.

4. Answering the 8th paragraph it is admitted that the bond attached to petitioner's petition, marked exhibit 5, on March 15, 1954, was presented to, filed with and approved by Mrs. Lois T. Sharpe, Clerk of City Council of the City of Baxley, who signed the certificate marked exhibit 6 attached to petitioner's petition and issued the order of supersedeas, marked exhibit 7, and attached to petitioner's petition. Although the said Mrs. Lois T. Sharpe signed the approval on the bond, certificate, and order of supersedeas, the instruments having been prepared for signature by attorney for the petitioner, above the typewritten words "Clerk Police (Mayor's) Court of City of Baxley, Appling County, Georgia", the said Mrs. Lois T. Sharpe is in fact Clerk of the City Council of the City [fol. 52] of Baxley and not Clerk of the Mayor's Court of the City of Baxley, Mayor's Court being also known as Police Court, the municipal court in which petitioner was convicted, the said Mayor's Court not then and not now having a Clerk.

5. Answering paragraph 9 it is denied that the judgment is contrary to law or that the ordinance is invalid or void for any of the reasons stated therein or for any other reason.

6. Further answering said writ and in compliance therewith, the undersigned adopts as a part of this answer exhibits 1, 2, 3, 4, 5, 6, 7, and the copy of the judgment rendered as stated in paragraph 7 as the proceedings in this case, and same by reference are incorporated herein as a part hereof. With reference to exhibits 5, 6, and 7

where the designation of Mrs. Lois T. Sharpe as Clerk of Police (Mayor's) Court of City of Baxley, Appling County, Georgia, appears in said exhibits following her signature, such designations are in error as Mayor's Court of City of Baxley does not have and has not had a Clerk, and there is no police court other than the Mayor's Court.

Respectfully Submitted

J. M. Dunn, Mayor, City of Baxley, Georgia

[fol. 54] In Superior Court of Appling County

[Title Omitted]

Exception and Traverse to Answer—
Filed October 20, 1954

Now comes the plaintiff in certiorari, Rose Staub, as provided in Code Section 19-302, and excepts to the answer filed and traverses the truth of the answer as follows:

1. Paragraphs 4 and 6 of the answer allege that Mrs. Lois T. Sharpe, who, as Clerk of the Mayor's Court of the City of Baxley, accepted, attested, approved and filed the supersedeas bond attached to plaintiff's petition as Exhibit 5, who, as Clerk of the Mayor's Court of the City of Baxley, executed her certificate that said supersedeas bond had been approved, accepted and filed, said certificate attached to plaintiff's petition as Exhibit 6, and, who, as Clerk of the Mayor's Court of the City of Baxley, issued an order of supersedeas, attached to plaintiff's petition as Exhibit 7, was not in fact the Clerk of the Mayor's Court of the City of Baxley, but was Clerk of the City Counsel for the City of Baxley, and that said Mayor's Court of the City of Baxley in fact had no Clerk. These allegations are excepted to, and the truth thereof traversed, upon the following facts, to-wit:

A. Counsel for plaintiff in certiorari, Leon A. Wilson II, upon arriving with plaintiff at the City Hall of the City of Baxley on March 15, 1954, at the time and place desig-

nated in the summons for the trial of the case herein certioraried, inquired of Honorable J. H. Highsmith, City Attorney and counsel for record for the City of Baxley in said case, and in the presence of Honorable J. M. Dunn, [fol. 55] Mayor and presiding magistrate of said Mayor's Court of the City of Baxley in said Case, Mrs. Lois T. Sharp- and plaintiff in certiorari, whether or not there was a clerk of said Mayor's Court of the City of Baxley. In answer to said inquiry, and in the presence of said Honorable J. M. Dunn, Mrs. Lois T. Sharp- and plaintiff in certiorari, the said Honorable J. H. Highsmith stated to counsel for plaintiff in certiorari that Mrs. Lois T. Sharpe was the Clerk of the Mayor's Court of the City of Baxley, there being no denial thereof by the said Honorable J. M. Dunn, Mrs. Lois T. Sharpe, or any other person at said time and place.

B. As a result of the statements and representations and in reliance thereon by said Honorable J. H. Highsmith to Counsel for plaintiff in certiorari, the latter filed with Mrs. Lois T. Sharpe plaintiff's plea in abatement to said summons, and the said Mrs. Lois T. Sharpe marked the same filed, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk. Immediately after the completion of said trial, having previously prepared the necessary papers and documents, counsel for plaintiff in certiorari presented to the said Mrs. Lois T. Sharpe, plaintiff's bond for the purpose of obtaining an order of supersedeas, and said bond was accepted, attested, approved and filed by the said Mrs. Lois T. Sharpe, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk. The said Mrs. Lois T. Sharpe thereupon executed her certificate, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk, that said supersedeas bond had been filed, approved, and accepted by her as such Clerk, and also [fol. 56] issued an order of supersedeas, as Clerk of Police (Mayor's) Court of the City of Baxley, and over written words designating her as such Clerk, all in the case herein certioraried and all in the presence of the said Honorable

J. H. Highsmith, Honorable J. M. Dunn and plaintiff in certiorari.

C. That counsel for plaintiff in certiorari, not knowing that there was a clerk of the said Mayor's Court of the City of Baxley had prepared the supersedeas bond, certificate and order of supersedeas to be filed, attested, approved and/or executed by the Honorable J. M. Dunn, as Judge of the Mayor's Court of the City of Baxley, and, because of the aforesaid statements and representations made to him, changed the designation thereon from the Judge to Clerk of said Court.

D. That Mrs. Lois T. Sharpe was present at all stages of trial of case herein certioraried, had custody of all of the books of record of said Police (Mayor's) Court of the City of Baxley, accepted, attested, approved and filed the aforesaid papers and documents in said case, and in all ways and means acted as the assumed and executed the duties of Clerk of said Court, and signed her name upon the aforesaid papers and documents in said case over the written words, "Clerk Police (Mayor's) Court of City of Baxley, Appling County, Georgia."

E. That all of the aforesaid acts and doings of the said Mrs. Lois T. Sharpe was in the presence of the said Honorable J. H. Highsmith, Honorable J. M. Dunn, and plaintiff in certiorari, who at all times acquiesced in and ratified her said acts and doings as Clerk of the Mayor's Court of the City of Baxley, and who at all times had knowledge of her acts and doings. The aforesaid acts and [fol. 57] doings of the said Mrs. Lois T. Sharpe were at all times under the direct supervision of and according to the directions given her by the said Honorable J. H. Highsmith and Honorable J. M. Dunn, acting in their official capacity as hereinbefore stated.

F. That counsel for plaintiff in certiorari and plaintiff in certiorari, herself, had no other means and opportunity to ascertain whether Mrs. Lois T. Sharpe was or was not the Clerk of the Mayor's Court of the City of Baxley, or whether said court had a Clerk or not, other than by inquiry of the officials of said Court and City of Baxley, and plain-

tiff in certiorari and her counsel had the right to rely upon the statements and representations made to them by the said Honorable J. H. Highsmith, Honorable J. M. Dunn and Mrs. Lois T. Sharpe to the effect that the latter was the Clerk of the Mayor's Court of the City of Baxley.

G. That said Honorable J. M. Dunn, the City of Baxley and the Counsel thereof should not, in good conscious and equity, be heard or allowed to take advantage of any defect in these proceedings growing out of the question of whether or not the said Mrs. Lois T. Sharpe is Clerk of the Mayor's Court of the City of Baxley, which defect, if any there is, is and was the result of their own making and a result of the misrepresentations of fact as aforesaid, acted upon and relied upon by plaintiff in certiorari and her counsel of record, so as to deprive plaintiff in certiorari of her rights of appeal and review of said case. That if it is ascertained that the said Mrs. Lois T. Sharpe is indeed not the Clerk of the Mayor's Court of the City of Baxley and that there is no clerk thereof, because of the facts hereinabove shown, she should be considered and held to be the [fol. 58] Clerk of said court for the purposes of this proceeding, in order to prevent a wrong and a fraud from being perpetrated upon plaintiff in certiorari in this case, depriving her valuable rights therein.

H. The statements of Honorable J. H. Highsmith, and the acts and doings of Mrs. Lois T. Sharpe, Honorable J. M. Dunn, and all other persons connected with the trial of said case herein certioraried was a fraud upon plaintiff in certiorari and upon her counsel of record, insofar as such statements, representations and acts and doings treated and represented Mrs. Lois T. Sharpe as the Clerk of the Mayor's Court of the City of Baxley.

Wherefore, plaintiff in certiorari prays that said exceptions sustained and that Honorable J. M. Dunn, Mayor and Magistrate of the Mayor's Court of the City of Baxley, be required to make more complete answer in the particulars mentioned, and that, for the purposes of this proceeding, because of the facts hereinabove shown, it be adjudged

and determined that Mrs. Lois T. Sharpe is the Clerk of said Mayor's Court of the City of Baxley.

Wilson & Wilson, Attorneys for Plaintiff in Certiorari.

GEORGIA, WARE COUNTY

Personally appeared before the undersigned, Leon A. Wilson, II, who on oath says that he is of counsel for plaintiff, that the facts alleged in the foregoing answer and traverse and exceptions come peculiarly within his knowledge and not that of plaintiff and that the statements con-
[fol. 59] tained therein are true.

Leon A. Wilson II

Sworn to and subscribed before me this 18th day of October, 1954.

Marion C. Pritchard, Notary Public, Ware County, Ga.

[File endorsement omitted]

[fol. 61] IN THE SUPERIOR COURT OF *Baxley* COUNTY

FINDING FOR RESPONDENT—November 13, 1954

After hearing evidence on within exceptions and traverse, I find against the exceptions and traverse.

This November 13, 1954.

Douglas F. Thomas, Judge Superior Court, Appling County, Georgia.

[File endorsement omitted]

[fol. 62] IN THE SUPERIOR COURT OF APPLING COUNTY

ROSE STAUB

v.

CITY OF BAXLEY

JUDGMENT—December 10, 1955

The foregoing matter coming on to be heard during the October Term, 1955, of this court, and it appearing that the judgment of this court formerly rendered dismissing the petition for certiorari was reversed by the Court of Appeals of this State by judgment dated March 17, 1955, said court holding that the petition should be considered upon its merits, and said judgment of the Court of Appeals having been made the judgment of this court, and said matter being heard upon the issues involved,

IT IS ORDERED, that the petition for certiorari be, and the same is hereby, overruled and the judgment of the court below sustained.

IT IS FURTHER ORDERED, that the defendant in certiorari have of and recover from plaintiff in certiorari, as principal, and United States Fidelity & Guaranty Company, as surety, the sum of Three Hundred ($300.00) Dollars principal, with interest thereon at the rate of 7% per annum from March 14, 1954, and $..... cost.

SO ORDERED, this 10th day of December, 1955.

Douglas F. Thomas, Judge Superior Court, Appling County, Georgia.

Filed in Office this 10th day of December, 1955.

W. M. Moody, Clerk Superior Court, Appling County, Georgia.

[fol. 63] IN THE SUPERIOR COURT OF APPLING COUNTY

CITY OF BAXLEY

v.

ROSE STAUB

JUDGMENT ON REMITTITUR—December 10, 1955

The above-stated case having been carried to the Court of Appeals of Georgia, by writ of error, and the said Court of Appeals of Georgia, at the March term, 1955, thereof, having reversed the decision of this court, on the trial of this case; it is on motion of counsel for plaintiff in error, ordered and decreed, that the said judgment of March 17, 1955, of said Court of Appeals of Georgia be entered on the minutes of this court, as the judgment of this court.

And it is further ordered, adjudged and decreed, that the said Rose Staub do have and recover of and from the said City of Baxley, defendant in error, the sum of $86.00 as her costs, expended in the defense and prosecution of the above-stated case.

This 10th day of December 1955.

Douglas F. Thomas, Judge of the Superior Court, Appling County, Georgia.

Leon A. Wilson II, Attorney for Plaintiff in Error.

[File endorsement omitted]

[fol. 66] IN THE COURT OF APPEALS OF GEORGIA

STAUB v. CITY OF BAXLEY

STATEMENT BY THE COURT

By the Court:

The trial court did not err in overruling the writ of certiorari.

Rose Staub, hereinafter called the defendant, was arrested for violation of an ordinance of the City of Baxley. Following the arrest of the defendant, she filed a petition for injunction in the Superior Court of Appling County, seeking to have the City of Baxley enjoined from proceeding with the prosecution, and seeking a declaratory judgment adjudging the ordinance void. The superior court refused to grant such relief. This judgment was affirmed by the Supreme Court with one Justice dissenting. See Staub v. Mayor & C. of Baxley, 211 Ga. 1 (83 S. E. 2d 606). The City of Baxley then proceeded with the prosecution, which resulted in conviction of the defendant in the Mayor's Court of the City of Baxley for violation of an ordinance of the City of Baxley. We will hereinafter refer to the City of Baxley as the plaintiff. The ordinance prohibited the solicitation of members for an organization without a permit and license. The defendant applied for and was granted a writ of certiorari, to which the mayor filed his answer. The defendant (plaintiff in certiorari), within the statutory time, filed her exceptions and traverse to said answer to the writ of certiorari. Counsel for both parties stipulated that all issues of fact and law should be submitted to and decided by the judge of the superior court, without the intervention of a jury.

[fol. 67] After the evidence had been submitted and argument had, the judge overruled such exceptions and traverse of the defendant (plaintiff in certiorari) to the answer of the judge to the writ of certiorari, and sustained the answer to the writ of certiorari, and dismissed the petition. The question presented to the Court of Appeals was whether or not a certiorari bond was properly signed. This court reversed the judgment of the trial court on this point, holding that the certiorari bond was properly signed, and

the case was returned to the trial court to be tried on its merits. (See Staub v. City of Baxley, 91 Ga. App. 650 (86 S. E. 2d 712). The case was so tried. The defendant again applied for the writ of certiorari, which was granted.

The Judge of the Superior Court of Appling County overruled the writ of certiorari and sustained the judgment of the Mayor's Court of the City of Baxley, thus convicting the defendant (plaintiff in certiorari) of a violation of the ordinance of the City of Baxley prohibiting the solicitation of members for an organization without a permit and license. It is to this judgment that error is assigned here.

For clarity we will quote the ordinance in its entirety:

[Omitted. Printed side page 9 ante]

[fol. 70] The writ of certiorari sets out that the said ordinance is repugnant to and violative of the First Amendment and Fourteenth Amendment to the Constitution of the United States; that such ordinance is repugnant to and violative to paragraph 8 of the National Labor Relations Act and tends to contravent said act and the public policy of the United States as contained in said act by establishing unwarranted conditions upon the right of the defendant to participate in the labor activities secured by the National Labor Relations Act and the public policy of the United States; that the ordinance was founded upon the unreasonable and invalid classification of persons who must pay the confiscatory fee set out in the ordinance; that said ordinance makes the payment of the fee conditioned upon the mere fact that a person receives remuneration for his efforts in soliciting membership in an organization; that said ordinance is invalid, in that it shows on its face that it is a regulatory measure imposing an excessive tax upon a privilege; that the ordinance shows upon its face that it is a device intended to prevent formation of labor unions; that such ordinance is void in that it is repugnant to and violative of article I, §1, of the Constitution of the State of Georgia, in that it is not impartial but is unrea-[fol. 71] sonable and arbitrary, and that the petitioner is deprived of her liberty and property without due process of law; that same is a misuse and abuse of the public power of the City of Baxley by subterfuge, thus depriving the defendant and others of their rights.

The evidence submitted on the hearing is substantially as follows: W. A. Schuman, Chief of Police of the City of Baxley, testified that he talked with the defendant; that the defendant stated that she was a paid employee of a labor organization, and her duties were to solicit members for that organization; that one Mamie Merritt was also so employed; and that the defendant had no permit to solicit members and had made no application for a permit. On cross-examination the witness testified that he did not see the witness solicit any members. Recalled, the witness testified that he did not tell the defendant or Mamie Merritt to get out of town and stay out. On re-cross-examination he testified that he arrested the defendant and Mamie Merritt.

Louise Bowyer, a witness for the plaintiff, testified that she knew the defendant, and that the defendant and Mamie Merritt came to her home and stated that they were trying to get people to join the union. On cross-examination, the same witness stated that she did not see the union card; that neither the defendant nor Mamie Merritt asked the witness for any money; that the witness was not asked to sign a card; and that no membership cards were left with the witness.

Catherine Taylor testified on behalf of the plaintiff that the defendant and Mamie Merritt held a meeting at the home of the witness, and stated that the purpose of the [fol. 72] meeting was to get members for the union; that the defendant offered to give the witness a membership card upon the payment of 64 cents per week dues, payable 4 weeks in advance; and that the witness did not join and no cards were left.

Sylvia Dixon, a witness for the plaintiff, testified substantially that she went to a meeting where the defendant and Mamie Merritt were present and that she was asked by the defendant to join the union, and that membership cards were offered to the witness.

Lois Taylor Sharp, Clerk of the City Council and witness for the plaintiff, testified substantially that neither the defendant nor Mamie Merritt made application for a permit as covered by the ordinance, and that no permit had been issued to them. On cross-examination, the witness testified

that she had had no one ask for a permit or a license to solicit members for an organization. She testified that the license fee required for automobile accessories is $100; for a bank or banker $150; for a billiard or pool room $100 for the first table and $10 for each additional table; $10 for a magazine or book agent, etc. (We give these figures to show the comparative amounts assessed against these people and/or business in relation to the permit or license fee for soliciting members for an organization.

The defendant made the statement that she talked with several ladies about the union.

Opinion

Gardner, P. J. Counsel for the defendant excepts to the judgment of the court for the following reasons: (1, 2, 3). [fol. 73] The evidence is contrary to law, without evidence to support it; (4) "because the ordinance . . . was and is unconstitutional and unreasonable, null and void in that: (a) Said ordinance . . . shows on its face that it is repugnant to and violative of the First Amendment and the Fourteenth Amendment to the Constitution of the United States; (b) said ordinance is repugnant to and violative of section 7 of the National Labor Relations Act . . . ; (c) said ordinance is not a valid ordinance in that it denies equal protection of the law to petitioner and others . . . ; (d) said ordinance is invalid . . . .; (e) said ordinance is an invalid regulation in that it leaves within the discretion of the mayor, etc., the refusing or granting the license required; (f) said ordinance is void in that it is repugnant to and violative of Article I, Section I, paragraph 3 of the Constitution of the State of Georgia in that petitioner is deprived of her liberty without due process of law; (i) said ordinance is not a valid ordinance enacted for any legitimate purpose to benefit the citizens of Baxley but shows on its face that it is unreasonable; (j) said ordinance is patently void in that same is a misuse and abuse of the police powers, etc.

It will be noted that counsel for the defendant in each instance attacks the ordinance as a whole. The attack should have been made against specific sections of the ordinance and not against the ordinance as a whole. In Anthony v.

City of Atlanta, 66 Ga. App. 504, 505 (18 S. E. 2d 81), this court said: "It is well settled that one or more sections of an ordinance may be unconstitutional and other sec- [fol. 74] tions constitutional; and where the allegations as to the unconstitutionality of an ordinance fail to definitely state what section of the ordinance is unconstitutional, such allegations are too indefinite to raise any question for decision as to the unconstitutionality of the ordinance. Glover v. Rome, 173 Ga. 239 (160 S. E. 249), and cit."

It seems that the defendant made no effort to secure a license. Having made no effort to secure a license, the defendant is in no position to claim that any section of the ordinance is invalid or unconstitutional. See Campbell v. City of Thomasville, 6 Ga. App. 212 (18b), 64 S. E. 815), wherein this court said: "One who has been convicted of selling 'near beer' in violation of that ordinance, but who has made no application to the city council and has tendered no bond at all, is not in a position to complain of the illegality of the requirement that the sureties on the bond shall be freeholders. This provision being void, the presumption is that, if he had tendered a bond otherwise sufficient, the city council would have ignored the void provision and would have accepted the bond."

The cases cited by counsel for the defendant will be found to have identified the sections of the ordinance in question and are therefore not in point.

It affirmatively appears that the attack was not made against any particular section of the ordinance as being void or unconstitutional, and that the defendant has made no effort to comply with any section of the ordinance. This being true, it is not necessary to pass upon the sufficiency of the evidence, the constitutionality of the ordinance, or any other phase of the case as argued by counsel for the defendant except as hereinabove discussed. In addition [fol. 75] to the case cited hereinabove, see Taylor v. Flint, 35 Ga. 124(3), and Board of Education of Glynn County v. Mayor, of Brunswick, 72 Ga. 353.

The trial court did not err in overruling the writ of certiorari.

Judgment affirmed. Townsend and Carlisle, JJ., concur.

[fol. 76] IN THE COURT OF APPEALS OF GEORGIA

JUDGMENT—April 12, 1956

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered: Rose Staub v. City of Baxley.

This case came before this court upon a writ of error from the Superior court of Appling county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. Gardner, Townsend and Carlisle, JJ., concur.

[fol. 96] IN THE COURT OF APPEALS OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—May 15, 1956

The following order was passed: Rose Staub v. City of Baxley.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 98] SUPREME COURT OF THE STATE OF GEORGIA

NOTICE OF FILING PETITION FOR CERTIORARI—June 14, 1956

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day an application to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of Rose Staub v. City of Baxley.

K. C. Bleckley, Clerk Supreme Court of Georgia.

[fol. 99] IN THE SUPREME COURT OF GEORGIA

ORDER DENYING APPLICATION FOR WRIT OF CERTIORARI—July 11, 1956

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered: Rose Staub v. City of Baxley.

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur.

[fol. 100] IN THE COURT OF APPEALS OF THE STATE OF GEORGIA

Case No. 36161

ROSE STAUB, Plaintiff in Error

vs.

CITY OF BAXLEY, Defendant in Error

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed October 5, 1956

1. Notice is hereby given that Rose Staub, the plaintiff in error above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of Georgia, entered on April 12, 1956, a motion for rehearing thereof having been thereafter denied by said court on May 15, 1956. A petition for writ of certiorari to review said judgment was denied by the Supreme Court of Georgia on July 11, 1956. Said judgment of the Court of Appeals affirmed the judgment of the Superior Court, Appling County, Georgia, entered on December 10, 1955, which had affirmed the judgment of conviction of plaintiff in error, entered in the Mayor's Court of the City of Baxley, Appling County, Georgia, for violation of a municipal ordinance of the City of Baxley.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2). Plaintiff in error was convicted of violation of a municipal ordinance of the City of Baxley, Appling County, Georgia, entitled "An Ordinance To Regulate The Solicitation of Membership in Organizations Among The Citizens of City of Baxley: To provide for Permits For Persons Or Agents Soliciting Such Members: To Provide For License Fees And For Violation Of This Ordinance," adopted September 17, 1949, and appearing in minute book 3, page 396, of the City of Baxley; was sentenced to thirty days confinement in the City Jail or a fine of three hundred dollars; [fol. 101] and a supersedeas of the judgment of conviction was obtained by making bond in the sum of five hundred dollars.

II. The Clerk of the Court of Appeals of the State of Georgia has prepared a transcript of the record in this cause under date of August 17, 1956, which can be transmitted to the Clerk of the Supreme Court of the United States, and included in said transcript are the following:

A. Bill of exceptions.

B. The transcript of record comprised of the following:

1. Petition for certiorari subscribed and sworn to on April 10, 1954 to which are attached as exhibits (a) the summons, (b) the ordinance regulating the solicitation of membership in organizations among the citizens of the City of Baxley, (c) the plea in abatement in the Mayor's Court, (d) the testimony in the Mayor's Court in narrative form, (e) the bond made to obtain a supersedeas of judgment of conviction, (f) certification of approval and acceptance of the bond, and (g) command to the Chief of Police of the City of Baxley to cease further proceedings until further order.
2. Sanction.
3. Writ of certiorari dated April 10, 1954.
4. Answer of Mayor Dunn.
5. Exceptions and traverse to the answer and the order thereon entered on November 13, 1954.

6. Judgment of the Superior Court entered on December 10, 1955.
7. Judgment of the Superior Court on remittitur entered on December 10, 1955, and filed on December 23, 1955.

C. The opinion of the Court of Appeals of the State of Georgia of April 12, 1956.

[fol. 102] D. The judgment of the Court of Appeals of the State of Georgia entered on April 12, 1956.

E. Plaintiff in error's motion for rehearing filed on April 23, 1956.

F. Order denying motion for rehearing entered on May 15, 1956.

G. Plaintiff in error's notice of intention to apply to the Supreme Court of Georgia for writ of certiorari filed on May 22, 1956.

H. Notice of application to the Supreme Court of Georgia for a writ of certiorari to the Court of Appeals dated June 14, 1956.

I. Judgment of the Supreme Court of Georgia denying application for a writ of certiorari dated July 11, 1956.

In addition to the foregoing items, which are included in the transcript of record prepared by the Clerk of the Court of Appeals of the State of Georgia under date of August 17, 1956, which items are paginated 1 through 99, there should be added the following items to be included in the record to be transmitted to the Clerk of the United States Supreme Court:

A. This notice of appeal.

B. The petition for a writ of certiorari filed with the Supreme Court of Georgia.

III. The following questions are presented by this appeal:

A. Whether freedom of speech, freedom of press, and the right of peaceable assembly, guaranteed against state

infringement by the Fourteenth Amendment of the United States Constitution as it incorporates the First Amendment, are abridged by a municipal ordinance which provides as follows: (1) that, before a person, firm, or organization may solicit citizens of the municipality for membership in any organization requiring payment of membership fees or dues, such person, firm, or organization must first secure a permit from the Mayor and the City Council who may withhold or grant that permit in their discretion based on their consideration of "the character of the applicant, the [fol. 103] nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens" of the municipality; and (2) that, if the person desiring to solicit is a salaried employee or officer of the organization for which membership is sought, or receives a fee for obtaining members, such person shall, in addition to securing a permit, pay a license fee of $2,000 per year plus $500 for each member obtained.

B. whether the right of employees to organize and to select representatives of their own choosing for the purpose of collective bargaining and other mutual aid or protection, safeguarded by the Fourteenth Amendment of the United States Constitution against state deprivation without due process of law, is abridged by the aforesaid municipal ordinance in that (1) it prohibits solicitation of membership for an organization without a permit and that permit may be withheld by the Mayor and the City Council from any person, firm or organization thought by them in their uncontrolled discretion and without any standards to be unsuitable, and (2) it imposes a prohibitive tax on solicitation by a salaried employee or officer of the organization for which membership is sought or by a person receiving any fee for obtaining members.

C. Whether the aforesaid municipal ordinance denies the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution in that (1) it singles out for taxation those persons who are salaried employees or officers of the soliciting organization or who receive any fee for solicitation, leaving all others who have received a permit free to solicit without paying the tax,

and (2) it imposes a tax on solicitation grossly in excess of taxes imposed on purely commercial activity.

D. Whether the aforesaid municipal ordinance, in prohibiting in the manner described the solicitation of members without a permit and in taxing the solicitation of members, conflicts with Section 7 of the National Labor Relations Act which provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of [fol. 104] their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

E. Whether consideration by the Supreme Court of the United States of a challenge to the validity of a municipal ordinance on federal grounds, where the challenge is to the ordinance on its face, in its entirety, and the bases of its invalidity are fully particularized, may be precluded by the refusal of the state court to entertain the merits of the challenge for the asserted reason that it is procedurally defective in that (1) the "attack should have been made against specific sections of the ordinance and not against the ordinance as a whole", and (2) "no effort" was made "to comply with any section of the ordinance."

/s/ Morris P. Glushien, /s/ Leon A. Wilson, II.

Poole, Pearce & Hall, By /s/ Ed Pearce, By /s/ Margaret H. Fairleigh, Attorneys for Rose Staub, Plaintiff in Error.

1202 Candler Building, Atlanta 3, Georgia.

[fol. 105] Proof of Service (Omitted in printing)

[fol. 107] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—
January 14, 1957

APPEAL from the Court of Appeals of the State of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.